

KELLY E. KONKRIGHT  
#33544  
LUKINS & ANNIS, P.S.  
1600 Washington Trust Financial Center  
717 W Sprague Ave.  
Spokane, WA 99201-0466  
Telephone: (509) 455-9555  
Facsimile: (509) 747-2323

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
AT SPOKANE

TRESHON NEDILL BROUGHTON,

Plaintiff,

V.

ALEX GORDON, individually and in his official capacity, SHANE EMERSON, individually and in his official capacity, City of Pullman, a Washington Municipality, the Pullman City Police Department, and JOHN DOES 1-10,

## Defendants.

NO. 2:18-cv-00340-SMJ

## ANSWER TO COMPLAINT, AFFIRMATIVE DEFENSES, AND JURY DEMAND

## ANSWER

Defendants Alex Gordon, Shane Emerson, the City of Pullman and the Pullman City Police Department (“Defendants”), by and through their counsel of record, hereby respond to the allegations of Plaintiff’s Complaint filed in the above-captioned matter as follows:

## **ANWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND 1**

LAW OFFICES OF  
**LUKINS & ANNIS, PS**  
A PROFESSIONAL SERVICE CORPORATION  
717 W Sprague Ave., Suite 1600  
Spokane, WA 99201  
Telephone: (509) 455-9555  
Fax: (509) 747-2323

## **PRELIMINARY STATEMENT**

1. Answering paragraph 1 of the Complaint, Defendants admit only that plaintiff filed a purported civil rights action pursuant to 42 U.S.C. § 1983 against defendants Alex Gordon and Shane Emerson, asserted purported federal civil rights claims against defendant the City of Pullman and asserted numerous purported state law claims. Any allegation not admitted is denied.

## **JURISDICTION AND VENUE**

2. Answering paragraph 2 of the Complaint, Defendants admit only that the United States District Court for the Eastern District of Washington has both subject matter and personal jurisdiction over the action alleged in the Complaint. Defendants further admit only that this Court has supplemental jurisdiction to hear state law claims, but Defendants deny that they are liable under any state tort claim theory alleged in the Complaint. Any allegation not admitted is denied.

3. Answering paragraph 3 of the Complaint, Defendants admit only that venue is proper in the United States District Court for the Eastern District of Washington and that all Defendants are residents of Washington. Any allegation not admitted is denied.

## PARTIES

4. Answering paragraph 4 of the Complaint, Defendants admit only that Plaintiff is Treshon Broughton and he is a black male. Defendants do not have sufficient information to admit or deny the remaining allegations therein, and therefore deny the same.

## **ANWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND 2**

LAW OFFICES OF  
**LUKINS & ANNIS, PS**  
A PROFESSIONAL SERVICE CORPORATION  
717 W Sprague Ave., Suite 1600  
Spokane, WA 99201  
Telephone: (509) 455-9555  
Fax: (509) 747-2323

1       5. Answering paragraph 5 of the Complaint, Defendants admit only that  
 2 Defendant Alex Gordon was employed by the City of Pullman and the Pullman  
 3 City Police Department as a law enforcement officer and at all times relevant to the  
 4 allegations of the Complaint was acting within the course and scope of his  
 5 employment and was acting under the color of state law. Defendants further admit  
 6 only that at all times relevant to the allegations of the Complaint Defendant  
 7 Gordon has been a resident of Whitman County, State of Washington. Any  
 8 allegation not admitted is denied.

10      6. Answering paragraph 6 of the Complaint, Defendants admit only that  
 11 Defendant Shane Emerson was employed by the City of Pullman and the Pullman  
 12 City Police Department as a law enforcement officer and at all times relevant to the  
 13 allegations of the Complaint was acting within the course and scope of his  
 14 employment and was acting under the color of state law. Defendants further admit  
 15 only that at all times relevant to the allegations of the Complaint Defendant  
 16 Emerson has been a resident of Whitman County, State of Washington. Any  
 17 allegation not admitted is denied.

18      7. Answering paragraph 7 of the Complaint, Defendants admit only that  
 19 Defendant the City of Pullman is a governmental entity and a Washington  
 20 municipal corporation operating within this judicial district. Defendants further  
 21 admit only that Defendant the Pullman City Police Department is a department of  
 22 Defendant the City of Pullman and that Defendants the City of Pullman and the  
 23 Pullman Police Department employed Defendants Emerson and Gordon as law  
 24  
 25  
 26

ANSWER, AFFIRMATIVE DEFENSES, AND JURY  
 DEMAND 3

LAW OFFICES OF  
**LUKINS & ANNIS, PS**  
 A PROFESSIONAL SERVICE CORPORATION  
 717 W Sprague Ave., Suite 1600  
 Spokane, WA 99201  
 Telephone: (509) 455-9555  
 Fax: (509) 747-2323

1 enforcement officers. The remaining allegations of paragraph 7 are legal  
 2 conclusions to which an answer is not required. Any allegation not admitted is  
 3 denied.

4       8. Answering paragraph 8 of the Complaint, Defendants respond that the  
 5 allegations therein are legal conclusions to which an answer is not required. Any  
 6 allegation not admitted is denied.

7

### FACTUAL ALLEGATIONS

8       9. Answering paragraph 9 of the Complaint, Defendants admit only that  
 10 on or about February 18, 2017, Plaintiff Broughton was present at a store named  
 11 Bob's Corner Market located in Pullman, Whitman County, Washington. Any  
 12 allegation not admitted is denied.

13       10. Answering paragraph 10 of the Complaint, Defendants admit only that  
 14 Defendant Gordon arrived at the store while Plaintiff Broughton was present inside  
 15 the store. Defendants further admit only that Defendants Gordon and Emerson  
 16 were in full uniform and carrying their service weapons during the time they were  
 17 inside the store on or about February 18, 2017. Any allegation not admitted is  
 18 denied.

19       11. Answering paragraph 11 of the Complaint, Defendants admit only that  
 20 before Defendants Gordon and Emerson arrived at the store, a 911 call was made  
 21 from the store and the caller stated words to the effect that, "Everything is good  
 22 now at Bob's Market" and then the call was disconnected. Defendants further  
 23 admit only that after the first 911 call was disconnected the 911 operator called  
 24  
 25  
 26

ANSWER, AFFIRMATIVE DEFENSES, AND JURY  
 DEMAND 4

LAW OFFICES OF  
**LUKINS & ANNIS, PS**  
 A PROFESSIONAL SERVICE CORPORATION  
 717 W Sprague Ave., Suite 1600  
 Spokane, WA 99201  
 Telephone: (509) 455-9555  
 Fax: (509) 747-2323

1 back to the store and an unidentified male subject answered and stated that  
 2 someone tried to use a fake \$20 bill, and stated words to the effect that "they have  
 3 it figured out now." Any allegation not admitted is denied.

4       12. Answering paragraph 12 of the Complaint, Defendants deny.

5       13. Answering paragraph 13 of the Complaint, Defendants admit only that  
 6 Defendant Emerson arrived at the store and made contact with Plaintiff Broughton  
 7 before Defendant Gordon arrived at the store and made contact with Plaintiff  
 8 Broughton. The remaining allegations therein are argumentative and as such an  
 9 answer is not required. Any allegation not admitted is denied.

10       14. Answering paragraph 14 of the Complaint, Defendants admit only that  
 11 Defendant Emerson first contacted Plaintiff Broughton while Plaintiff Broughton  
 12 was standing in front of the store's check-out counter. Any allegation not admitted  
 13 is denied.

14       15. Answering paragraph 15 of the Complaint, Defendant Emerson  
 15 repeatedly asked Broughton to provide him with identification while standing at  
 16 the check-out counter. The remaining allegations therein are argumentative or  
 17 legal conclusions and as such an answer is not required. Any allegation not  
 18 admitted is denied.

19       16. Answering paragraph 16 of the Complaint, Defendants deny.

20       17. Answering paragraph 17 of the Complaint, Defendants admit only that  
 21 Plaintiff Broughton's driver's license fell to the floor of the store and was later  
 22 picked up by a Washington State University intern. The remaining allegations  
 23

24  
 25  
 26  
 ANWER, AFFIRMATIVE DEFENSES, AND JURY  
 DEMAND 5

LAW OFFICES OF  
**LUKINS & ANNIS, PS**  
 A PROFESSIONAL SERVICE CORPORATION  
 717 W Sprague Ave., Suite 1600  
 Spokane, WA 99201  
 Telephone: (509) 455-9555  
 Fax: (509) 747-2323

1 therein are argumentative or legal conclusions and as such an answer is not  
 2 required. Any allegation not admitted is denied.

3       18. Answering paragraph 18 of the Complaint, Defendants admit only that  
 4 Defendant Gordon arrived at the store after Defendant Emerson's initial contact  
 5 with Plaintiff Broughton. The remaining allegations therein are argumentative or  
 6 legal conclusions and as such an answer is not required. Any allegation not  
 7 admitted is denied.

8       19. Answering paragraph 19 of the Complaint, Defendants admit only that  
 9 Defendants Gordon and Emerson took Plaintiff Broughton to the ground and that  
 10 Officer Emerson hammer fisted the left side of Plaintiff's Broughton's face with  
 11 his right hand approximately two times not using full force. Any allegation not  
 12 admitted is denied.

13       20. Answering paragraph 20 of the Complaint, Defendants admit only that  
 14 Defendant Gordon used a Taser device on Plaintiff Broughton after first warning  
 15 him that he was going to do so and that the Taser's probes made contact with  
 16 Plaintiff Broughton's body. Any allegation not admitted is denied.

17       21. Answering paragraph 21 of the Complaint, the allegations therein are  
 18 argumentative or legal conclusions and as such an answer is not required. Any  
 19 allegation not admitted is denied.

20       22. Answering paragraph 22 of the Complaint, the allegations therein are  
 21 argumentative or legal conclusions and as such an answer is not required. Any  
 22 allegation not admitted is denied.

23  
 24  
 25  
 26  
 ANWER, AFFIRMATIVE DEFENSES, AND JURY  
 DEMAND 6

LAW OFFICES OF  
**LUKINS & ANNIS, PS**  
 A PROFESSIONAL SERVICE CORPORATION  
 717 W Sprague Ave., Suite 1600  
 Spokane, WA 99201  
 Telephone: (509) 455-9555  
 Fax: (509) 747-2323

1       23. Answering paragraph 23 of the Complaint, admit only that Plaintiff  
2 Broughton was bleeding from two small points at which the Taser darts had  
3 penetrated his skin. Any allegation not admitted is denied.

4       24. Answering paragraph 24 of the Complaint, admit only that Plaintiff  
5 Broughton was handcuffed by Defendants Emerson and Gordon after Defendant  
6 Gordon had deployed the Taser on Plaintiff Broughton. The remaining allegations  
7 therein regarding Defendant Emerson's actions are argumentative or legal  
8 conclusions and as such an answer is not required. Any allegation not admitted is  
9 denied.

10      25. Answering paragraph 25 of the Complaint, Defendants deny.

11      26. Answering paragraph 26 of the Complaint, the allegations therein are  
12 argumentative or legal conclusions and as such an answer is not required. Any  
13 allegation not admitted is denied.

14      27. Answering paragraph 27 of the Complaint, the allegations therein are  
15 argumentative or legal conclusions and as such an answer is not required. Any  
16 allegation not admitted is denied.

17      28. Answering paragraph 28 of the Complaint, the allegations therein are  
18 argumentative or legal conclusions and as such an answer is not required. Any  
19 allegation not admitted is denied.

20      29. Answering paragraph 29 of the Complaint, the allegations therein are  
21 argumentative or legal conclusions and as such an answer is not required. Any  
22 allegation not admitted is denied.

23  
24  
25  
26  
ANSWER, AFFIRMATIVE DEFENSES, AND JURY  
DEMAND 7

LAW OFFICES OF  
**LUKINS & ANNIS, PS**  
A PROFESSIONAL SERVICE CORPORATION  
717 W Sprague Ave., Suite 1600  
Spokane, WA 99201  
Telephone: (509) 455-9555  
Fax: (509) 747-2323

1       30. Answering paragraph 30 of the Complaint, the allegations therein are  
2 argumentative or legal conclusions and as such an answer is not required. Any  
3 allegation not admitted is denied.

4       31. Answering paragraph 31 of the Complaint, the allegations therein are  
5 argumentative or legal conclusions and as such an answer is not required. Any  
6 allegation not admitted is denied.

7       32. Answering paragraph 32 of the Complaint, Defendants admit only that  
8 Defendants Gordon and Emerson initiated criminal charges against Plaintiff  
9 Broughton by way of criminal citation that charged Plaintiff Broughton with  
10 Obstructing Law Enforcement Officers and for Resisting Arrest in violation of  
11 RCW 9A.76.020 and RCW 9A.76.040. The remaining allegations therein are  
12 argumentative or legal conclusions and as such an answer is not required. Any  
13 allegation not admitted is denied.

14       33. Answering paragraph 33 of the Complaint, the allegations therein are  
15 argumentative or legal conclusions and as such an answer is not required. Any  
16 allegation not admitted is denied.

17       34. Answering paragraph 34 of the Complaint, Defendants admit only that  
18 Defendants Gordon and Emerson prepared police reports. The remaining  
19 allegations therein are argumentative or legal conclusions and as such an answer is  
20 not required. Any allegation not admitted is denied.

21  
22  
23  
24  
25  
26  
  
ANSWER, AFFIRMATIVE DEFENSES, AND JURY  
DEMAND 8

LAW OFFICES OF  
**LUKINS & ANNIS, PS**  
A PROFESSIONAL SERVICE CORPORATION  
717 W Sprague Ave., Suite 1600  
Spokane, WA 99201  
Telephone: (509) 455-9555  
Fax: (509) 747-2323

35. Answering paragraph 35 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

36. Answering paragraph 36 of the Complaint, Defendants admit that the criminal charges brought against Plaintiff Broughton were dismissed as the result of the court granting the prosecutor's motion to dismiss.

37. Answering paragraph 37 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required.

38. Answering paragraph 38 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

39. Answering paragraph 39 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

40. Answering paragraph 40 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

**COUNT 1**

**42 U.S.C. 1983/State Law – Unlawful Seizure**

41. Answering paragraph 41 of the Complaint, Defendants repeat and reallege their responses to paragraphs 1 through 40, inclusive, as if fully set forth herein.

## **ANWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND 9**

LAW OFFICES OF  
**LUKINS & ANNIS, PS**  
A PROFESSIONAL SERVICE CORPORATION  
717 W Sprague Ave., Suite 1600  
Spokane, WA 99201  
Telephone: (509) 455-9555  
Fax: (509) 747-2323

42. Answering paragraph 42 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

43. Answering paragraph 43 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

44. Answering paragraph 44 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

**COUNT 2**

45. Answering paragraph 45 of the Complaint, Defendants repeat and reallege their responses to paragraphs 1 through 44, inclusive, as if fully set forth herein.

46. Answering paragraph 46 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

47. Answering paragraph 47 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

## **ANWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND 10**

LAW OFFICES OF  
**LUKINS & ANNIS, PS**  
A PROFESSIONAL SERVICE CORPORATION  
717 W Sprague Ave., Suite 1600  
Spokane, WA 99201  
Telephone: (509) 455-9555  
Fax: (509) 747-2323

48. Answering paragraph 48 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

49. Answering paragraph 49 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

## **COUNT 3**

---

**42 U.S.C. 1983/State Law – Unreasonable/Excessive Use of Force**

50. Answering paragraph 50 of the Complaint, Defendants repeat and reallege their responses to paragraphs 1 through 49, inclusive, as if fully set forth herein.

51. Answering paragraph 51 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

52. Answering paragraph 52 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

53. Answering paragraph 53 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

## ANWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND 11

LAW OFFICES OF  
**LUKINS & ANNIS, PS**  
A PROFESSIONAL SERVICE CORPORATION  
717 W Sprague Ave., Suite 1600  
Spokane, WA 99201  
Telephone: (509) 455-9555  
Fax: (509) 747-2323

**COUNT 4**  
**42 U.S.C. 1983 – Failure to Inform**

54. Answering paragraph 54 of the Complaint, Defendants repeat and reallege their responses to paragraphs 1 through 53, inclusive, as if fully set forth herein.

55. Answering paragraph 55 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

56. Answering paragraph 56 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

**COUNT 5**  
**42 U.S.C. 1983 – Malicious Prosecution**

57. Answering paragraph 57 of the Complaint, Defendants repeat and reallege their responses to paragraphs 1 through 56, inclusive, as if fully set forth herein.

58. Answering paragraph 58 of the Complaint, Defendants admit only that Defendants Gordon and Emerson initiated criminal charges against Plaintiff Broughton by way of criminal citation that charged Plaintiff Broughton with Obstructing Law Enforcement Officers and for Resisting Arrest in violation of RCW 9A.76.020 and RCW 9A.76.040. Any allegation not admitted is denied.

## **ANWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND 12**

LAW OFFICES OF  
**LUKINS & ANNIS, PS**  
A PROFESSIONAL SERVICE CORPORATION  
717 W Sprague Ave., Suite 1600  
Spokane, WA 99201  
Telephone: (509) 455-9555  
Fax: (509) 747-2323

59. Answering paragraph 59 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

60. Answering paragraph 60 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

61. Answering paragraph 61 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

62. Answering paragraph 62 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

**COUNT 6**

63. Answering paragraph 63 of the Complaint, Defendants repeat and reallege their responses to paragraphs 1 through 62, inclusive, as if fully set forth herein.

64. Answering paragraph 64 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

## ANWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND 13

LAW OFFICES OF  
**LUKINS & ANNIS, PS**  
A PROFESSIONAL SERVICE CORPORATION  
717 W Sprague Ave., Suite 1600  
Spokane, WA 99201  
Telephone: (509) 455-9555  
Fax: (509) 747-2323

65. Answering paragraph 65 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

66. Answering paragraph 66 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

**COUNT 7**

67. Answering paragraph 67 of the Complaint, Defendants repeat and reallege their responses to paragraphs 1 through 66, inclusive, as if fully set forth herein.

68. Answering paragraph 68 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

69. Answering paragraph 69 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

70. Answering paragraph 70 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

## ANWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND 14

LAW OFFICES OF  
**LUKINS & ANNIS, PS**  
A PROFESSIONAL SERVICE CORPORATION  
717 W Sprague Ave., Suite 1600  
Spokane, WA 99201  
Telephone: (509) 455-9555  
Fax: (509) 747-2323

**COUNT 8**  
**DEFAMATION – STATE LAW CLAIM**

71. Answering paragraph 71 of the Complaint, Defendants repeat and reallege their responses to paragraphs 1 through 70, inclusive, as if fully set forth herein.

72. Answering paragraph 72 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

73. Answering paragraph 73 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

74. Answering paragraph 74 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

75. Answering paragraph 75 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

76. Answering paragraph 76 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

## ANWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND 15

LAW OFFICES OF  
**LUKINS & ANNIS, PS**  
A PROFESSIONAL SERVICE CORPORATION  
717 W Sprague Ave., Suite 1600  
Spokane, WA 99201  
Telephone: (509) 455-9555  
Fax: (509) 747-2323

77. Answering paragraph 77 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

78. Answering paragraph 78 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

79. Answering paragraph 79 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

80. Answering paragraph 80 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

81. Answering paragraph 81 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

**COUNT 9**  
**FALSE LIGHT – STATE LAW CLAIM**

82. Answering paragraph 82 of the Complaint, Defendants repeat and reallege their responses to paragraphs 1 through 81, inclusive, as if fully set forth herein.

## ANWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND 16

LAW OFFICES OF  
**LUKINS & ANNIS, PS**  
A PROFESSIONAL SERVICE CORPORATION  
717 W Sprague Ave., Suite 1600  
Spokane, WA 99201  
Telephone: (509) 455-9555  
Fax: (509) 747-2323

83. Answering paragraph 83 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

84. Answering paragraph 84 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

85. Answering paragraph 85 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

86. Answering paragraph 86 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

87. Answering paragraph 87 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

88. Answering paragraph 88 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

## **ATTORNEY FEES**

89. Answering paragraph 89 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

## **ANWER, AFFIRMATIVE DEFENSES, AND JURY DEMAND 17**

LAW OFFICES OF  
**LUKINS & ANNIS, PS**  
A PROFESSIONAL SERVICE CORPORATION  
717 W Sprague Ave., Suite 1600  
Spokane, WA 99201  
Telephone: (509) 455-9555  
Fax: (509) 747-2323

**JURY TRIAL**

2       90. Answering paragraph 90 of the Complaint, the allegations therein are  
 3 argumentative or legal conclusions and as such an answer is not required.  
 4

5                  Answering the WHEREFORE clause prayer for relief that follows directly  
 6 after paragraph 90 of Plaintiff's Complaint, Defendants deny that paragraph and its  
 7 subparts 1 through 4, inclusive, and further deny that Plaintiff Broughton is entitled  
 8 to any other award of damages or relief whatsoever.

**AFFIRMATIVE DEFENSES**

9       By way of further answer, Defendants allege the following affirmative  
 10 defenses:  
 11

12       1. Failure to State a Claim: Plaintiff's complaint fails to state a claim  
 13 upon which relief can be granted.  
 14

15       2. Intervening Act of Third Parties: If Plaintiff sustained injuries or  
 16 damages as claimed, they were caused in whole or in part by the acts or omissions  
 17 of others for whose intervening conduct or negligence Defendants are not  
 18 responsible.  
 19

20       3. Foreseeability: Injury to Plaintiff was not foreseeable as a matter  
 21 of law.  
 22

23       4. Superseding Cause: Any injury to Plaintiff was caused by the act  
 24 of third persons, who by their intervention prevents Defendants from being liable  
 25 for harm to Plaintiff.  
 26

ANSWER, AFFIRMATIVE DEFENSES, AND JURY  
 DEMAND 18

LAW OFFICES OF  
**LUKINS & ANNIS, PS**  
 A PROFESSIONAL SERVICE CORPORATION  
 717 W Sprague Ave., Suite 1600  
 Spokane, WA 99201  
 Telephone: (509) 455-9555  
 Fax: (509) 747-2323

1       5.    Qualified Immunity: Defendants Officer Gordon and Officer  
2 Emerson are immune from any liability and protected against the burden of  
3 litigation under the doctrine of qualified immunity and the common law  
4 immunities protecting peace officers, prosecutors and public officials.  
5

6       6.    Unclean Hands: Plaintiff's claims are barred by the doctrine of  
7 unclean hands.

8       7.    Probable Cause: Defendants Emerson and Gordon had probable  
9 cause to effectuate an arrest of Plaintiff.

10      8.    Reasonable Suspicion: Defendants Emerson and Gordon had  
11 sufficient reasonable suspicion of criminal activity by Plaintiff to detain him.  
12

13      9.    Arrest Under Legal Authority: Defendants Emerson's and Gordon's  
14 conduct in effectuating the arrest of Plaintiff was under legal authority and  
15 privileged.

16      10.   Statute of Limitations: Plaintiff's claims, and each of them, are  
17 barred by the applicable statutes of limitations.

18      11.    Conduct Not Extreme or Outrageous: Any and all claims by Plaintiff  
19 based in whole or in part upon any alleged physical or emotional injury or mental  
20 distress are barred because no conduct of Defendants was extreme or outrageous or  
21 undertaken with the intent of causing, or in reckless disregard of the probability of  
22 causing, emotional distress.

23      12.    Failure to Mitigate: The Complaint, and each and every  
24 purported claim alleged therein, is barred in whole or in part because Plaintiff has  
25

26  
ANWER, AFFIRMATIVE DEFENSES, AND JURY  
DEMAND 19

LAW OFFICES OF  
**LUKINS & ANNIS, PS**  
A PROFESSIONAL SERVICE CORPORATION  
717 W Sprague Ave., Suite 1600  
Spokane, WA 99201  
Telephone: (509) 455-9555  
Fax: (509) 747-2323

1 failed to mitigate or reasonably attempt to mitigate his damages, if any, as required  
 2 by law.

3       13. Absence of Malice, Reckless Indifference or Fraud Precludes Punitive  
 4 Damages: Defendants allege that they have not acted with malice, reckless  
 5 indifference or fraud towards Plaintiff and, therefore, Defendants cannot be liable  
 6 for punitive damages.

7       14. Failure to Plead Facts Sufficient to Support Punitive Damages:  
 8              Plaintiff is not entitled to receive punitive damages because Plaintiff has not  
 9 pleaded facts sufficient to support such an award.

10       15. Lack of Capacity to be Sued: Defendant Pullman City Police  
 11 Department is a department of the City of Pullman and lacks the capacity to be  
 12 sued as a separate entity.

13       16. Comparative Negligence: If Defendants were negligent in any respect,  
 14 which Defendants expressly deny, then any such negligence on the part of  
 15 Defendants was less than that of Plaintiff and Plaintiff's recovery should therefore  
 16 be diminished or barred.

17       17. EstoppeL: By reason of Plaintiff's own acts and omissions, Plaintiff  
 18 is estopped from seeking any recovery from Defendants by reason of the  
 19 allegations set forth in the Complaint.

20       18. Justified Use of Force: The Complaint and each cause of action  
 21 therein is barred because the use of force against the Plaintiff by Defendants and  
 22 the employees of the City, if any, was privileged and justified.

23  
 24  
 25  
 26  
 ANWER, AFFIRMATIVE DEFENSES, AND JURY  
 DEMAND 20

LAW OFFICES OF  
**LUKINS & ANNIS, PS**  
 A PROFESSIONAL SERVICE CORPORATION  
 717 W Sprague Ave., Suite 1600  
 Spokane, WA 99201  
 Telephone: (509) 455-9555  
 Fax: (509) 747-2323

1       19. No Monell Liability: The Complaint fails to state a federal civil  
 2 rights claim against the Defendants under the doctrine announced in *Monell v.*  
 3 *Department of Social Services*, 436 U.S. 658 (1978).

4       20. Denial of Damages: Defendants deny that Plaintiff has been  
 5 damaged in any sum or sums, or otherwise, or at all, by reason or any act or  
 6 omission by Defendants.

7       21. No Respondeat Superior Liability: Defendants City of Pullman  
 8 and the Pullman Police Department allege that they are not liable for any acts or  
 9 omissions of its employees which occurred outside of those employees's scope of  
 10 employment with the City.

11       22. Failure to Comply with Tort Claims Act: Defendants allege that  
 12 the Plaintiff failed to comply with all conditions precedent required under the state  
 13 tort claims act for the state law claims alleged in his Complaint, including but not  
 14 limited to failing to timely file the requisite notice of tort claim and therefore all  
 15 such claims of Plaintiff are barred.

16       23. Good Faith Immunity: Defendants were acting without malice in  
 17 good faith at all relevant times and therefore enjoy good faith immunity from suit.

18       24. Pullman City Police Department Is Not a "Person": Defendants  
 19 allege that Pullman City Police Department is not liable under 42 U.S.C. § 1983  
 20 because it is not a "person" within the meaning of that statute.

21       25. Assumption of the Risk: Plaintiff had full knowledge of the risk  
 22 involved in the activity in which Plaintiff was engaged at the time of the incident  
 23

24  
 ANWER, AFFIRMATIVE DEFENSES, AND JURY  
 DEMAND 21

LAW OFFICES OF  
**LUKINS & ANNIS, PS**  
 A PROFESSIONAL SERVICE CORPORATION  
 717 W Sprague Ave., Suite 1600  
 Spokane, WA 99201  
 Telephone: (509) 455-9555  
 Fax: (509) 747-2323

1 set forth in the Complaint, and voluntarily assumed all risks incident to the activity  
2 engaged in at the time and place mentioned in the Complaint, and the loss or  
3 damage, if any, sustained by Plaintiff was caused by those risks assumed.

4       26. Waiver: By conduct, representations and omissions, Plaintiff has  
5 waived any claim for relief against Defendants.

6       27. Laches: Plaintiff has unnecessarily delayed in protecting the right  
7 or rights asserted and has unreasonably delayed in bringing this action, and is  
8 consequently not entitled to the relief sought.

9       28. Reckless and Wanton: At all times mentioned in the Complaint,  
10 Plaintiff acted in a careless, reckless, wanton and negligent manner in and about  
11 the matter set forth in the Complaint; that such conduct proximately contributed to  
12 the injuries and damages, if any, sustained or claimed by Plaintiff and that as a  
13 consequence Plaintiff's claims are barred.  
14  
15

16  
17       WHEREFORE, having fully answered Plaintiff's Complaint, Defendants  
18 pray as follows:  
19

- 20       1. That the Court dismiss Plaintiff's Complaint;  
21       2. That the Court enter judgment in favor of Defendants;  
22       3. That Defendants recover their attorney's fees, costs, disbursements  
23 incurred herein, and  
24  
25  
26

ANWER, AFFIRMATIVE DEFENSES, AND JURY  
DEMAND 22

LAW OFFICES OF  
**LUKINS & ANNIS, PS**  
A PROFESSIONAL SERVICE CORPORATION  
717 W Sprague Ave., Suite 1600  
Spokane, WA 99201  
Telephone: (509) 455-9555  
Fax: (509) 747-2323

1       4. That Defendants be granted such other and further relief as the Court  
2 deems just and equitable.

3                     DATED this 7th day of March, 2019.  
4

5                                     LUKINS & ANNIS, P.S.  
6

7                     By /s/Kelly E. Konkright  
8                             KELLY E. KONKRIGHT  
9                             #33544  
10                            Attorneys for Defendants Shane  
11                           Emerson, Alex Gordon, Pullman  
                            Police Department and  
                            City of Pullman

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
  
ANWER, AFFIRMATIVE DEFENSES, AND JURY  
DEMAND 23

LAW OFFICES OF  
**LUKINS & ANNIS, PS**  
A PROFESSIONAL SERVICE CORPORATION  
717 W Sprague Ave., Suite 1600  
Spokane, WA 99201  
Telephone: (509) 455-9555  
Fax: (509) 747-2323